

This case has previously been before the Board. By decision dated May 21, 2004, the Board affirmed the Office's June 30 and April 24, 2003 decisions. The Board found that appellant failed to establish a recurrence of disability causally related to a December 8, 1993

employment injury¹ and that the Office properly refused to reopen her case for further reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).² The law and the facts as set forth in the Board's decision is incorporated herein by reference.³

Subsequent to the Board's May 21, 2004 decision, appellant requested reconsideration on June 29, 2004. She argued that she was unable to defend her rights as she did not receive the Office's denial letters of December 27, 2001 and June 30, 2003. Appellant submitted an August 29, 2003 notice of decision issued by the Social Security Administration awarding benefits; a notice of the social security benefit amount that she was awarded; and a February 24, 2004 decision issued by the Office of Personnel Management awarding benefits along with various documentation. Appellant also submitted medical evidence which was either previously of record or which did not contain an opinion on the causal relationship of appellant's condition.⁴

In a decision dated September 10, 2004, the Office denied her reconsideration request finding that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

¹ A lumbosacral strain was accepted by the Office as employment related.

² Docket No. 04-516 (issued May 21, 2004).

³ At the time of the December 8, 1993 injury, appellant was a 45-year-old legal document review clerk. She returned to work in a light-duty capacity on March 20, 1995 and resigned effective February 24, 2001 from the employing establishment.

⁴ This consists of: a May 2, 2001 report from Dr. William Barrish; medical reports from Dr. Joseph White dated May 3, 2002, January 22 and July 14, 2003; a July 23, 2003 medical report from Dr. Hallett H. Mathews; an August 20, 2002 medical report from Dr. R.S. Kadian; lumbar spine residual functional capacity questionnaires dated July 25, 2002 and August 8, 2003; medical record notes for the period January 11, 1999 to January 20, 2000 and July 16, 1999 to March 6, 2001; reports from Mary Washington Hospital Radiology dated February 23 and February 25, 2002; a July 1, 2003 report from the Inova Alexandria Hospital; November 4, 2001 and February 25, 2002 reports from the Medical Center of Stafford; and an April 24, 2001 report from Stafford Urgent Care.

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

ANALYSIS

Appellant's June 29, 2004 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Although appellant argued that she was unable to defend her rights as she did not receive the Office's decisions of December 27, 2001 and June 30, 2003, contrary to her assertion, the procedural history of this case clearly reflects that appellant exercised her appeal rights issued in each of the decisions she allegedly did not receive. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁷

With respect to the third requirement, the submission of relevant and pertinent new evidence not previously considered by the Office, appellant submitted certain evidence that was of record and previously considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening the case.⁸

Appellant also submitted decisions from the Social Security Administration and the Office of Personnel Management. However, the findings of other administrative agencies are not determinative of her disability under the Federal Employees' Compensation Act.⁹ The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof on the question of disability.¹⁰ Thus, this evidence is not relevant with regard to appellant's claim under the Federal Employees' Compensation Act.

With respect to the new medical evidence presented, this evidence, is not relevant to the issue of whether appellant sustained a recurrence of disability on and after February 24, 2001 causally related to the December 8, 1993 employment injury. The medical evidence is not relevant because it does not contain an opinion addressing the cause of appellant's condition for the claimed period. As appellant did not submit any relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of her claim.

⁷ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii).

⁸ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁹ *Daniel Deparini*, 44 ECAB 657, 660 (1993).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board